

2014 SBOA County Clerk's Conference

Criminal Code Changes /Case Code Type Issues and other Topics

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Division of State Court Administration

Topic 1: Expungements HEA 1155

Amendments were effective 3/26/2014

See The Division's Trial Court Administration Manual for Judges and Clerks for a complete discussion of the amendments made by HEA 1155. This manual is available at:

<http://www.in.gov/judiciary/admin/2492.htm>

Here are some highlights:

Filing Fees:

No filing fees should be charged for filing a petition for expungement.

Confidentiality:

The petition and order are confidential under IC 35-38-9-10(i) however, if a record, or a portion of a record, is excluded from public access for reasons other than its confidentiality by law, a publicly accessible indication of the fact of its exclusion must be created. Administrative Rule 9(D)(3) requires that any and all redactions be identified. The phrase "not-public information" or an equivalent designation may be used.

How can we follow the statute and the rule?

- The petition and proposed order should be filed with you on green paper
- your CCS entry should be "confidential petition received"
- after the order is entered your CCS entry should be "order granting confidential petition entered" or "order denying confidential petition entered".

Is the hearing on the petition open or closed? The hearing is open unless a statute/rule or court action declares it closed.

Petition Contents:

The statute now tells us what must be included in a petition to expunge an arrest record/juvenile adjudication:

The petition to expunge an arrest or juvenile adjudication must be verified and set forth:

- The date of the arrest;
- The county in which the arrest occurred;
- The law enforcement agency employing the arresting officer, if known;
- Any other known identifying information, such as the name of the arresting officer, case number or court cause number;
- Petitioner's date of birth
- Petitioner's social security number

A petition to expunge a misdemeanor or felony must be verified and include:

- The petition must be verified
- Petitioner's full name and all other legal names or aliases by which the petitioner is or has been known.
- Petitioner's date of birth.
- Petitioner's addresses from the date of the offense to the date of the petition.
- Attach a certified copy of petitioner's records from the bureau of motor vehicles.
- An affirmation that no criminal investigation or charges are pending against the petitioner.
- An affirmation that the petitioner has not committed another crime within the period required for expungement.
- A list of all convictions and the date of the conviction and any appeals from the conviction and the date any appellate opinion was handed down, if applicable.
- An affirmation that the required period has elapsed or attach a copy of the prosecuting attorney's written consent to a shorter period.
- a list of any other petitions that the petitioner has filed under I.C. 35-38-9
- For petitions filed under I.C. 35-38-9-5 the petitioner shall attach a copy of the prosecuting attorney's written consent.
- The petitioner shall provide evidence that the petitioner has paid all fines, fees, and court costs and satisfied any restitution obligation imposed on the person as part of the sentence.
- Any other information that the petitioner believes may assist the court.

Evidentiary Standard:

Preponderance of the evidence

Where can a petition for expungement be filed:

Most expungement petitions may only be filed in the circuit or superior court in the county of conviction. Only petitions to expunge arrest records can be filed in city/town court.

Plea Agreements:

A person may not waive the right to expungement as part of a plea agreement. A purported waiver of the right to expungement is invalid and unenforceable as against public policy. This does not prohibit the finding of a waiver of the right to expungement based on a failure to comply with the provisions of IC 35-38-9. See IC 35-38-9-11.

Model Petitions and Orders:

The Division, the Indiana Judicial Center and the Records Management Committee have developed model petitions for Categories 1, 2 and 3 and model orders for Categories 1, 2, 3, 4, 5 plus a model order for a petition to expunge multiple convictions. These model petitions and forms are available here: <http://www.in.gov/judiciary/2706.htm>. A court may develop its own forms.

Topic 2: Confidentiality of Juvenile Paternity Cases SEA 19

Effective 7/1/2014

The legislation appears to make all JP cases open to the public however the Court believes this would cause problems because some information and documents filed in these cases are confidential for reasons other than the JP case itself being confidential.

Please note: The Court is currently discussing this issue and will be issuing an order amending Administrative Rule 9 to make their interpretation of SEA 19 clear. The Division was instructed to prepare an Order with the following conditions however, until the Order is published these conditions could change.

- JP cases opened on or after 7/1/2014 are no longer confidential by statute. Some information filed in a JP will continue to be excluded from public access due to some other statute or rule. This information must be filed according to Trial Rule 5(G) “the green paper rule”
- JP cases disposed prior to 7/1/2014 remain confidential. They will not be put on public access.
- JP cases currently open (and those that are currently closed but get redocketed) – the portion of the case created prior to 7/1/2014 remains confidential. Any filings made or records created on or after 7/1/2014 are not confidential (unless confidential under some other rule/statute). This does not mean you can create a new case with a new case number, you merely need to segregate the portions of the file created before 7/1/2014. A new non-confidential CCS should be started and the first entry on this new CCS should say something similar to “all CCS entries made prior to 7/1/2014 are located in the confidential portion of this file”.

- Prospective lawyers in JP cases will be allowed access to the confidential JP cases upon filing an *Affirmation to Maintain Confidentiality*. This new form will be created by the Division.

Topic 3: Judgment Dockets HEA 1347

The clerk is the official keeper of the judgment docket book

A judgment docket must contain:

- (A) all civil judgments in which one party owes money to another party including any court costs awarded to a judgment creditor and
- (B) any entry that is required by statute

A judgment docket may not include:

- (A) judgments in which money is owed by a person to a state, a county, or another governmental entity as a result of:
 - a criminal conviction or
 - a violation of an infraction or ordinance, or
- (B) except for cases in which the state obtains a judgment of unpaid taxes, judgments in which a government entity is the sole creditor

This legislation was an attempt to give us some direction about what should be listed in the judgment docket book. Remember, an unpaid judgment is still a judgment regardless of whether it is listed in the judgment docket book. The lien on real property in your county is the only extra benefit that results from listing a judgment in the judgment docket book. It is still possible to use a collection agency or tax intercept to try to get an unpaid judgment satisfied regardless of whether the judgment is listed in the judgment docket book. I believe the legislators wanted to eliminate listing judgments to the state/county/governmental agency because no satisfaction is ever filed on these judgments, even when they are paid.

What no longer gets listed in the judgment docket book:

Judgments where the creditor is a state, a county or a governmental entity due to a criminal conviction or IF or OV case. This would include judgments for unpaid criminal costs that have been “reduced” to a civil judgment.

Judgments where a governmental entity is the sole creditor (except for judgments for unpaid taxes like a tax warrant)

Judgments for “things” (not money)

What still gets listed:

Tax warrants

Civil judgments for money (not things) where the creditor is not the state, county, or governmental entity

Restitution orders (IC 35-50-5-3) and reimbursement orders (IC 35-50-5-4)

Where it is not clear:

The new law indicates the clerk should continue to list “any entry required by statute” but also says do not list judgments in which a governmental entity is the sole creditor (other than judgments for unpaid taxes). There are specific statutes that instruct the clerk to record these judgments: repairs of railroad crossings by local government (IC 8-6-12-2), encroachments on state highways (IC 8-23-5-1), regulation of billboards (IC 8-23-20-26) but in these situations, the creditor will be a governmental entity. The Division advises you to continue to list these judgments until there is a clarification in the law.

Some counties maintain more than 1 judgment docket book. Does HEA 1347 apply to all judgment docket books or just the circuit judgment docket book?

The Division advises that the amendments to I.C. 33-32-3-2 would apply to all judgment docket books maintained by a county.

Topic 4: Changes to the Criminal Code HEA 1006

Effective Date 7/1/2014

HEA 1006 changes the criminal penalties from four felony levels (A to D) to six felony levels and provides sentencing range and advisory for each felony level. Under HEA 1006 offenders would serve 75% of the determined sentence.

Misdemeanor classifications and penalty ranges remain unchanged.

How do I tell whether to open a felony case using the current case types (FA through FD) or the new case types (F1 through F6)?

The important date to look at is the date the offense allegedly occurred. If the offense occurred on or before 6/30/2014 you will open the case using the current case types (FA through FD). If the offense occurred on or after 7/1/2014 you will open the case using the new case types (F1 through F6).

Case Types

F1 all Class A

| | |
|----|---|
| F2 | mostly Class A, some Class B |
| F3 | mostly Class B, some Class A. a few Class C |
| F4 | mostly Class B, some Class C |
| F5 | mostly Class C, some Class D, a few Class B |
| F6 | mostly Class D, a few Class C, one Class B |

QCSR Reports

We already have the new levels incorporated into the QCSR spreadsheet.

New sentencing ranges

| | Range | Advisory | Range at 75% |
|----|----------|----------|---------------|
| MR | 45 – 65 | 55 | 33.75 – 48.75 |
| F1 | 20 – 40 | 30 | 15 - 30 |
| F2 | 10 – 30 | 17.5 | 7.5 – 22.5 |
| F3 | 3 – 16 | 9 | 2.25 - 12 |
| F4 | 2 – 12 | 6 | 1.5 - 9 |
| F5 | 1 – 6 | 3 | .75 – 4.5 |
| F6 | .5 – 2.5 | 1 | .25 – 1.25 |

Jury Size

12 jurors needed for MR or F1 through F5, 6 jurors needed for all other crimes